TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910

No. 446

OSCAR MITCHELL, APPELLANT,

vs.

CLARK IRON COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED FEBRUARY 17, 1910.

(22,026)

(22,026)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 800.

OSCAR MITCHELL, APPELLANT,

vs.

CLARK IRON COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 23, 1910.

1 In the Circuit Court of the United States, District of Minnesota, Fifth Division.

In Equity. No. 734.

OSCAR MITCHELL, Plaintiff,

vs.

CLARK IRON COMPANY and JOHN G. WILLIAMS, WILLIAM ALDEN SMITH, EMILY J. CLARK, CHARLES R. SLIGH, and FRANK JEWELL, the Directors of said Clark Iron Company, and FRANK JEWELL, as President, JOHN G. WILLIAMS, as Vice-President, and CHARLES R. SLIGH, as Secretary and Treasurer of said Company, Defendants.

Appearances.

Washburn, Bailey & Mitchell, Duluth, Minnesota, Solicitors for Plaintiff;

John G. Williams, Duluth, Minnesota, Solicitor for the Defendants.

Pleas before the Honorable the Judges of the Circuit Court of the United States of America for the District of Minnesota, Fifth Division, of the January Term of said Court, Held in said District, in the year of our Lord A. D. 1910.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on the 10th day of February, A. D. 1910, came the plaintiff above named, by Washburn, Bailey & Mitchell, his solicitors, and of counsel and filed in the clerk's office of said Court, his bill of complaint in the words and figures following, towit:

2 In the Circuit Court of the United States, District of Minnesota, Fifth Division.

OSCAR MITCHELL, Plaintiff,

vs.

CLARK IRON COMPANY and JOHN G. WILLIAMS, WILLIAM ALDEN SMITH, EMILY J. CLARK, CHARLES R. SLIGH, and FRANK JEWELL, the Directors of said Clark Iron Company, and FRANK JEWELL, as President, JOHN G. WILLIAMS, as Vice-President, and CHARLES R. SLIGH, as Secretary and Treasurer of said Company, Defendants.

To the Honorable Judges of the Circuit Court of the United States in and for the District of Minnesota:

Oscar Mitchell of Duluth, Minnesota and a citizen of the State of Minnesota, brings this his bill of complaint against the Clark Iron Company and John G. Williams, William Alden Smith, Emily J. Clark, Charles R. Sligh and Frank Jewell the Directors of said

Clark Iron Company, and Frank Jewell as President, John G. Williams as Vice President and Charles R. Sligh as Secretary and Treasurer of said company, the said Clark Iron Company being a citizen of the State of Minnesota and the said John G. Williams, Vice President and Director of said company being likewise a citizen of the State of Minnesota and both being inhabitants of the District of Minnesota, Fifth Division; the said other defendants being individually citizens of the State of Michigan, and thereupon your orator complains and says:

3 That the plaintiff is and for many years last past has been a citizen of the State of Minnesota and an inhabitant of the District of Minnesota, Fifth Division;

That the defendant Clark Iron Company is a corporation duly created, organized and existing under and by virtue of the provisions of Chapter 28 of the General Laws of Minnesota for the year 1876 and the laws amendatory thereof, and as such corporation, is entitled to own and hold real estate within the said State of Minnesota, and that the principal place of business of said corporation is and for many years has been in the City of Duluth in the Fifth Division of the District of Minnesota, and said corporation has for more than five years last past been a citizen of the State of Minnesota and an inhabitant of the District of Minnesota, Fifth Division.

That the defendant John G. Williams is the Vice President and a director of the said Clark Iron Company and as such has immediate charge and care of the property of the said company hereinafter mentioned; that the said Williams is and for more than ten years last past has been a citizen of the State of Minnesota and an inhabitant of the District of Minnesota, Fifth Division;

That the other defendants herein named are, and for more than one year last past have been, as this plaintiff is informed and believes, residents, citizens and inhabitants of the State of Michigan and of the Western District thereof, and that the defendant Frank Jewell is the president and the defendant Charles R. Sligh is the Secretary and Treasurer of the said defendant Clark Iron Company, and all of the individual defendants herein named are directors of said company.

That the defendant Clark Iron Company is and for several years last past has been the owner of the South half of the Northwest quarter, the West half of the Southwest quarter of Section Twenty-eight (28) in Township Fifty-eight (58) North, of Range Twenty (20) West, and the South half of the Northeast quarter of Section Twenty-three (23) in said Town and Range and the Southeast quarter of the Southwest quarter of Section Thirty-two (32) in said Town and Range, all situated in the County of St. Louis in the State of Minnesota and in the Fifth Division of the District of Minnesota.

That, as this plaintiff is informed and believes, the said defendant Clark Iron Company also has some interest in another tract
4 of forty acres situated in said county, the description of which this plaintiff does not know.

That the defendant Clark Iron Company some years ago made explorations for iron ore upon the lands hereinbefore described, or

ome portion thereof, and caused explorations and developments to e made thereon, resulting in the discovery of large bodies of iron re in said premises, or some portion thereof.

That for more than three years last past the said lands upon which ich deposits of iron ore have been discovered, have been leased to ther parties or corporations for the purpose of carrying on mining perations thereon and taking out and removing iron ore, in consideration of the payment to the said defendant Clark Iron Company f rents or royalties based upon the iron ore so mined and removed, nd that for more than three years last past the said defendant lark Iron Company has not engaged in any business other than to atch over and care for the said lands and receive the rents and oyalties accruing therefrom and distribute the same to its stockolders by means of dividends, except such business as has been ecessary to transact in defending its title to the said premises, in hich the said defendant has incurred large expense, the amount of hich is unknown to this plaintiff, and that the only income the said efendant company has had for more than three years last past as been by way of rent and revenue from the said lands, accruing y and thru the leasing thereof for iron mining purposes by way f rental paid by the lessees on a royalty basis upon the iron ore ined and removed from said lands.

That the said defendant Clark Iron Company has a capital stock f Three Million Dollars represented by shares of One Hundred Dolars each, and this plaintiff is and ever since the 21" day of January 908 has been the owner and holder of Two hundred (200) shares f the capital stock of said corporation.

That the matter in dispute in this cause exceeds the sum of Two Thousand Dollars, exclusive of interest and costs and the same arises nder the Constitution and Laws of the United States.

That at its last preceding session, the Congress of the United States passed an act entitled: "An Act to Provide Revenue, Equalize Duties and Encourage the Industries of the United States, and for Other Purposes," which was approved and signed by the President of he United States on the 5th day of August, 1909 at five minutes after five o'clock P. M. on said day; that in and by Section 38 of said Act of Congress it is provided that every corporation organized for profit and having a capital stock represented by shares, theretofore or thereafter organized under the laws of the United States, or of any state or territory of the United States, and engaged in business in any state or territory of the United States, shall be subject to pay annually a special tax, therein called an excise tax, with respect to the carrying on or doing business by such corporation, equivalent to one per centum upon the entire net income, over and above $5000, received by it from all sources during such year, exclusive of the amounts received by it as dividends upon the stock of other corporations subject to the tax imposed by said act, except certain corporations for religious, charitable, educational and certain other purposes specified in the proviso in said section, within none of which excepted classes does this defendant come.

That in the second subdivision of said Section 38 of said Act it is provided that such net income shall be ascertained by deducting from the gross amount of the income of such corporation received within the year from all sources: 1.—All the ordinary and necessary expenses actually paid within the year out of the income in the maintenance and operation of its business and properties, including all charges, such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; 2.—All losses actually sustained through the year and not compensated for by insurance or otherwise, including a reasonable allowance for depreciation of property, if any. 3.—Interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the paid up capital stock of such corporation. 4.—All sums paid by it within the year for taxes imposed under the authority of the United States or any state or territory thereof, or imposed by the government of any foreign country as a condition to carrying on business therein. 5.—All amounts received by it within the year as dividends upon the stock of other corporations, joint stock companies or associations, subject to the tax imposed by said section.

That under the third subdivision of said Act it is provided that from the amount of the net income of each of such corporations, ascertained as above set forth, the sum of $5000 shall be deducted and that said tax shall be computed upon the remainder of
6 said net income of such corporation for the year ending December 31, 1909 and for each current year thereafter.

That it was also provided in said act that on or before the first day of March, 1910 and the first day of March of each year thereafter, a true and accurate return under oath or affirmation of its President, Vice President or other principal officer and its Treasurer or Assistant Treasurer, should be made by each of the corporations subject to the tax imposed by said law to the Collector of Internal Revenue for the district in which such corporation has its principal place of business, which return, it is required by said act, shall set forth: 1.—The total amount of the paid up capital stock of such corporation; 2.—The total amount of the bonded or other indebtedness thereof at the close of the year. 3.—The gross amount of the income of such corporation received during such year from all sources; 4.—The total amount of all the ordinary and necessary expenses actually paid out of the earnings in the maintenance and operation of the business and properties of such corporation, with certain separate statements as therein provided. 5.—The total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property. 6.—The amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the paid up capital stock of such corporation. 7.—The amounts paid by it within the year for taxes imposed under the authority of the United States or any state or territory thereof, stating separately the amounts so paid by it for taxes imposed by the government of any foreign country as a condition to carrying on business therein. 8.—

Net income of such corporation, joint stock company or association after making the deductions in said section authorized.

It was further provided in said Act that all of the returns received by the Collector of Internal Revenue should be by him forthwith transmitted to the Commissioner of Internal Revenue and that the Commissioner of Internal Revenue should make assessments thereon of said tax authorized by said act, and that when such assessment should be made, the said returns, together with any correc-
7 tions thereof which may have been made by the Commissioner, should be filed in the office of the Commissioner of Internal Revenue at Washington and should constitute public records and be open to inspection as such.

That it provided that all such assessments so to be made upon such returns, should be made on or before the first day of June of each successive year, and that the same should be paid before the 30th day of June.

It is further provided in said Act that if any of the corporations shall refuse or neglect to make a return at the time or times specified therein, in each year, or shall render a false or fraudulent return, such corporation shall be liable to a penalty of not less than One Thousand Dollars and not exceeding Ten Thousand Dollars, and that the Commissioner of Internal Revenue in making assessments of such taxes, in case of refusal or neglect on the part of the corporation to make the return or to verify the same as required by the Act, shall add fifty per cent. to such tax, and, further, that in case of failure to pay such tax within the time provided, a penalty of five per centum upon the amount of such tax shall be added thereto and interest at the rate of one per centum per month from the time such taxes become due, to be collected therewith.

That by the terms and provisions of the eighth subdivision of said Section 38 of the said Act, the laws relating to the collection, remission and refund of internal revenue taxes, as far as applicable to and not inconsistent with the provisions of the said section, are extended and made applicable to the tax imposed by said section.

The plaintiff further alleges and says that the enactments of Congress embraced in said Section 38 of said Act, contravenes the Constitution of the United States and invades and violates the rights, under the Constitution, of the plaintiff and all others similarly situated, and the rights of the defendant Clark Iron Company and the tax authorized to be levied and collected under and by virtue of said section is in violation of the plaintiff's constitutional rights and the constitutional rights of the defendant Clark Iron Company and the protection guaranteed to this plaintiff and to all others similarly situated and to the said Clark Iron Company, and all of its stockholders by said Constitution, in this:

1. As an excise tax, the same is obnoxious to the provisions of Section 8 of Article I. of the Constitution of the United States which requires that "all duties, imposts and excises shall be uniform
8 throughout the United States," in that said taxes authorized by said act

(*a*)—Are so unequal and partial as not to be within the taxing power of the United States and to be in violation, not only of said

Section 8 of Article I. of the Constitution, but of the spirit and intent of the whole instrument;

(*b*)—The taxes provided by said enactment are not uniform throughout the United States, either intrinsically as operating on individual tax payers or with respect to any particular class of business, nor are the same geographically uniform with respect to any business or particular class of business, nor with respect to the volume thereof or the rate of taxation thereon.

That among other, such violations of the Constitution are evidenced by the fact that the law purports to levy a tax upon corporations whose net income is more than Five Thousand Dollars and none upon corporations engaged in the same kind of business whose net income is not more than Five Thousand Dollars. That no tax is levied upon the business done by individuals, while citizens engaged in the same business through the means of a corporation chartered by a sovereign state to do such business, are taxed. That the tax laid is not with reference to a particular kind or class of business wherever done throughout the United States, but only on such parts thereof as may be done by a corporation, and hence is not an excise tax applying either intrinsically or geographically uniformly throughout the United States.

2. As a tax upon the net income of corporations, it includes taxes upon the income of both real and personal property and investments therein for income, including income from municipal bonds and other public securities, all of which are direct taxes, (and in so far as the same are upon the income from municipal bonds and public securities, not taxable at all,) and the same are not apportioned in accordance with Section 2 of Article I, of the constitution which, in so far as the same relates to this subject, reads as follows:

"Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons,"

and is in violation of the provisions of Section 9 of Article I. of the Constitution, which, so far as relates to this subject, reads:

"No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken,"

9 and as the said provisions for taxation are so intermingled and inseparable from the other provisions, and the taxes thereby imposed are so intermingled and inseparable from the taxes upon other subjects of taxation, and all together form one entire and indivisible scheme of taxation, the whole of said Act as found in said Section 38 of said Congressional Enactment, is void and unconstitutional.

Furthermore, the tax as an income tax in substance and form, is not equable, being levied upon only a part of the people and is a direct tax and not apportioned in accordance with the provisions of the Constitution.

3. That the same is a tax to be levied, not with respect to the doing of any kind or class of business nor upon the production or consumption or sale of any particular commodity or product, nor upon corporations doing a certain kind of business, nor upon corporations deriving their existence by virtue of any law of the United States, but is laid with respect to the doing of any kind of business when the same is done by and through the means of a corporation, although such corporation be created by the authority of a sovereign state, and is therefore a tax upon the corporate franchises of such corporations and the enjoyment of the franchises granted by a sovereign state, and as such is obnoxious to Article X. of the Constitution which provides:

"The powers not delegated to the states by the United States, nor prohibited by it to the states, are reserved to the states respectivly, or to the people."

That by said act it is attempted to levy a tax or penalty upon a corporate franchise and the exercise of a corporate franchise granted by a sovereign state in the exercise of the sovereign powers reserved to it under the Federal Constitution, and to prohibit the enjoyment of such right and franchise, unless the corporation holding the same shall submit and file statements and reports, not required by the laws of the state or by its charter, with respect to its business, and pay a tax to the Federal Government, not required by the state, as a condition to the exercise of the franchise granted to it by a sovereign state in pursuance of the powers reserved to such state under the Constitution of the United States; and there exists by reason of the said Constitution and particularly of said Article X. of the amendments thereto, no power in the Federal Government to tax, destroy or place any penalty or condition upon the enjoyment of a corporate franchise granted by a sovereign state, and to do so is to infringe and destroy such power.

4. That said act provides enormous and excessive penalties for failure to make and file returns to the end that an assessment of such tax may be made, in that it provides for a penalty therefor of not less than One Thousand Dollars, and which may be as much as Ten Thousand Dollars, and for an additional fifty per centum of the amount of such tax for a failure to make and file the returns and report required by such act, and such act is therefore a denial to such corporations, including the defendant Clark Iron Company, of the equal protection of the law, by subjecting such corporations to excessive and ruinous penalties if they exercise their right to contest the validity of such law in the courts, and for such reasons, as well as because of all of the matters set forth in the preceding paragraphs, said law is obnoxious to the Constitution of the United States and to the whole thereof, and particularly to Section 1 of Article XIV of the Amendments to said Constitution which provides that "there shall not be denied to any person equal protection of the laws," and to Article V. of the Amendments to said Constitution which, among other things, provides that, "No person shall be deprived of life, liberty or property wihout due process of law," and both the levy and enactment of such taxation and the infliction of such penalties and the invasion of the private rights and business

and books of such corporations, including the defendant corporatio and the coercion or intended coercion by reason thereof of such c porations, including the defendant corporation, into compliar therewith by reason of such penalties, without contesting such la operates to deprive such corporations, including the defendant c poration and others similarly situated, of their property without d process of law and is therefore obnoxious to Article VIII. of t Amendments to the Constitution of the United States which provi that: "Excessive bail shall not be required of nor excessive fines i posed upon nor cruel nor unusual punishments inflicted," and t plaintiff alleges that upon all of the grounds hereinbefore set for said Section 38 of the said Act of Congress of August 5", 1909, is u constitutional, inoperative and void and the taxes therein directed be levied and assessed and collected and the penalties therein p vided to be enforced for the violation of said act, are without lawf authority and void.

11 That the Commissioner of Internal Revenue, Mr. Roy E. Cabell of Washington, D. C., with the approval of the S retary of the Interior, has formulated and promulgated regulatio known as "Regulations No. 31 United States Internal Revenue," f the guidance of collectors of internal revenue throughout the Unit States, and for the information of corporations in making retur under said act, making classification of corporations and containi various instructions for the enforcement of said law, and has del ered the same in large numbers to the Collector of Internal Reven for the District of Minnesota.

That the Collector of Internal Revenue for the District of Minn sota obtained the names of corporations existing in said distri among others the name of the defendant corporation, the Clark Ir Company, and has sent out to each of them, including the said c fendant company, a copy of said Regulations No. 31, accompani by blank forms of returns and thereby demanded of the defenda corporation and of a multitude of other corporations, to make o and verify such returns, pursuant to said enactment and pursua to said regulations, showing numerous things and matters pertai ing to the affairs of such corporation, including all of the matte required by said law to be shown and exhibited in such returns, a more, and requiring the same to be filed with the said Collector or before March first next, a copy of which regulations so sent o and described as aforesaid, and as delivered to the said defenda Clark Iron Company, is hereto attached Marked "Exhibit A" a made a part of this bill of complaint; that one copy of the form return sent by the Collector to the said defendant Clark Iron Co pany, addressed to it at its office in Duluth, Minnesota, being des nated as "Form 638" is hereto attached, marked "Exhibit B" a made a part of this bill of complaint.

That this suit is not a collusive one to confer on a court of t United States jurisdiction of a case of which it would not otherwi have cognizance.

That this plaintiff, as a stockholder of the said defendant Cla Iron Company, has demanded of the said company that it do n

make out or file such returns with the Collector of Internal Revenue and that it shall take such steps as may be necessary to resist the levy, assessment and payment of such tax, but that the said defendant, acting through its officers and directors, has, as this plaintiff is informed and believes, determined to make and file such re-
12 turns as required by said law, in order to avoid the risk of the penalties provided therein for failure so to do, and that unless restrained by the court, the said defendant corporation, acting through its officers and directors, will not only make out and file such return, but will also pay the tax that will be assessed thereon by the Commissioner of Internal Revenue after such return shall have been made and filed and such assessment is made by him thereon, in order to avoid the risks and penalties for failure to make such payment and to comply with such law.

Upon information and belief, that the net income of the defendant Clark Iron Company for the year 1909 greatly exceeded the sum of Five Thousand Dollars and a true return of its income and revenues for said year, after the disbursements and various allowances provided in said act to be shown, will show a net income greatly exceeding the sum of five thousand dollars and render said corporation subject to be taxed under said enactment.

That the payment of such taxes will diminish the assets of the said Clark Iron Company, and lessen the dividends and the value of the shares therein;

That the voluntary compliance by the said defendant company, through its officers, in the making and filing of said return, will expose to public examination and make a public record of affairs and transactions of said defendant company, and that if such report be not made, or if made and the same is not satisfactory to the Commissioner of Internal Revenue or to the Collector of Internal Revenue for the said district of Minnesota, unless this defendant company and its officers be enjoined by the court from making such report, further reports and returns will be demanded and will be made, examinations of books and records will be made and all of the affairs of said defendant company examined into in order that the said Collector or Commissioner, with the aid of such examination, books and records, may make out and assess such amount of tax as the commissioner concludes the said defendant company is liable to pay under said Section 38 of said act, and, unless restrained by this court, the defendant corporation, acting through its said officers and directors, will make payment of such taxes, and unless said defendant company abstains from such payment by reason of the injunction of this court, said revenue officers will enforce such collection with the penalties thereon, provided by said Section 38, by seizure, distraint or otherwise, as provided in Sections 3172 to 3231 inclusive of the Revised Statutes of the United States for the collection and enforcement of internal revenue taxes.

13 That the voluntary making and filing of the returns required by said Section 38, of the property and affairs of the said defendant company, will result in making a public record thereof and be an exposition of the same and of all of the internal

affairs of the said defendant company and will subject it and the plaintiff as a stockholder therein, and all others similarly situated, to risk and loss and annoyance, and result in a violation of the right of all of the stockholders of the said corporation to have the affairs of the said corporation, its receipts and disbursements maintained with that secrecy which any individual and any private corporation has a right to have maintained inviolate with respect to its affairs; and the filing of such return will result, not only in the exposition to public examin-tion of the condition of the said corporation and of its receipts and disbursements and of its transactions, but will subject this plaintiff and other stockholders similarly situated, to having the affairs, both of said corporation and of their interests as stockholders therein, made a matter of public record and thereby violate the right of this plaintiff and of all others similarly situated, to have the said matters as private affairs kept inviolate and not made public, all of which will result in irreparable injury to this plaintiff for which no adequate remedy can be had at law, and, furthermore, that voluntary compliance with the provisions of said law in the making of such returns and the payment of such tax as may be levied thereon, will expose the said defendant company to a multiplicity of suits, not only to the injury and damage of the said defendant company, but to the injury and damage of this plaintiff and all others similarly situated, and unless this court shall by its injunction or injunctional order prevent the actions of the said defendant company hereinbefore set forth, from being done and performed by the said defendant company and protect the said defendant company in its obedience to such order or injunction as the court may issue, this plaintiff will be deprived of his property without due process of law and the property of said defendant corporation will be taken for public use without due process of law, without just compensation and without the authority of any valid law;

All of which actings and doings, which will be done unless restrained by this court, are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

To the end, therefore, that this plaintiff and others similarly situated may have that relief which can only be obtained in a court of equity and that the defendants may answer the premises,
14 but not upon oath or affirmation the benefit whereof is expressly waived by this plaintiff.

Wherefore Your orator prays that it be adjudged and decreed that the said provisions of said law contained in Section 38 of the said Act of Congress of August 5", 1909 and known as the "Corporation Tax Law," are unconstitutional, null and void, and that the said defendant Clark Iron Company and the other defendants the officers and directors thereof, be restrained from voluntarily complying with the provisions of said act and from making the lists, returns and statements provided in said act to be made and from paying the tax or any tax upon the net income of said corporation or any part thereof, under the provisions of said act, assessed or which may be assessed or purported to be assessed by the Commissioner of In-

ternal Revenue under the provisions of said act, and your orator further prays that the court do now grant him a temporary writ of injunction so restraining the said defendant corporation and its officers and directors, pending the final determination of this cause, and until the further order and decree of this court in the premises, and for such other and further relief as the nature of this case may require and to your honors may seem meet.

To the end that your orator may obtain the relief to which he is justly entitled in the premises, he now prays the court to grant him due process of subpœna directed to the said defendants requiring and commanding each of them to appear herein and answer but not under oath (the same having been expressly waived) the several allegations in this your orator's bill contained and further to stand to, perform and abide such further order, direction and decree therein as to this honorable court may seem meet and as shall seem agreeable to equity and good conscience.

Dated, January 31st, 1910.

OSCAR MITCHELL, *Plaintiff.*
WASHBURN, BAILEY & MITCHELL,
Solicitors and of Counsel for Plaintiff,
700-9 *Lonsdale Bldg., Duluth, Minnesota.*

15 UNITED STATES OF AMERICA,
District of Minnesota, County of St. Louis, ss:

On this 31st day of January, A. D. 1910, before me personally appeared Oscar Mitchell, the plaintiff in the above entitled action, who made solemn oath that he had read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

[NOTARIAL SEAL.] F. M. EMANUELSON,
Notary Public, St. Louis County, Minnesota.

My commission expires Mar. 11, 1912.

Endorsed: Bill of Complaint. Filed February 10th, 1910, Henry D. Lang, Clerk, By Thos. H. Pressnell, Deputy.

16 PLAINTIFF'S EXHIBIT A.

Regulations No. 31, United States Internal Revenue.

Law and Regulations Relative to Excise Tax on Corporations, Joint Stock Companies, Associations, and Insurance Companies, Imposed by Authority of Section 38, Act of August 5, 1909.

December 3, 1909.

17 Regulations Relating to the Assessment and Collection of the Special Excise Tax Imposed by Section 38 of the Act of August 5, 1909, on Corporations, Joint Stock Companies, Associations, and Insurance Companies.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER INTERNAL REVENUE,
WASHINGTON, D. C., *December* 3, 1909.

Section 38 of the act of August 5, 1909, is as follows:

SEC. 38. That every corporation, joint stock company or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any State or Territory of the United States or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed; or if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its Teritories, Alaska, and the District of Columbia during such year exclusive of amounts so received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: *Provided, however,* That nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders or associations, and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious charitable, or educational purposes, no part of the net in-

come of which inures to the benefit of any private stockholder or individual.

Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of
18 property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, all interest actually paid by it within the year on deposits; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country as a condition to carry on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: *Provided,* That in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its Territories, Alaska, and the District of Columbia, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its Territories, Alaska, or the District of Columbia not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United

States and any of its Territories, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds shall be treated as being payments required by law to reserve funds.

Third. There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing
19 paragraphs of this section, the sum of five thousand dollars, and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice-president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations, joint stock companies or associations, and insurance companies, subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint stock company or association, or insurance company has its principal place of business, or, in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth (first) the total amount of the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation, joint stock company or association, or insurance company at the close of the year; (third) the gross amount of the income of such corporation, joint stock company or association, or insurance company received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia; also the amount received by such corporation, joint stock company or association, or insurance company within the year by way of dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by this section; (fourth) the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint stock company or association, or insurance company within the year, stating sep-

ately all charges such as rentals or franchise payments required to made as a condition to the continued use or possession of prop-ty, and if organized under the laws of a foreign country the nount so paid in the maintenance and operation of its business thin the United States and its Territories, Alaska, and the Dis-ct of Columbia; (fifth) the total amount of all losses actually stained during the year and not compensated by insurance or other-se, stating separately any amounts allowed for depreciation of prop-ty, and in the case of insurance companies the sums other than vidends, paid within the year on policy and annuity contracts and e net addition, if any, required by law to be made within the year reserve funds; and in the case of a corporation, joint stock com-ny or association, or insurance company, organized under the laws a foreign country, all losses actually sustained by it during the year business conducted by it within the United States or its Territories, Alaska, and the District of Columbia, not compensated by in-surance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance com-nies the sums other than dividends, paid within the year on policy d annuity contracts and the net addition, if any, required by law be made within the year to reserve fund; (sixth) the amount of terest actually paid within the year on its bonded or other indebt-ness to an amount of such bonded and other indebtedness not ex-eding the paid-up capital stock of such corporation, joint stock mpany or association, or insurance company, outstanding at the se of the year, and in the case of a bank, banking association, or ust company, stating separately all interest paid by it within the ar on deposits; or in case of a corporation, joint stock company or ociation, or insurance company, organized under the laws of a for-gn country, interest so paid on its bonded or other indebtedness to amount of such bonded and other indebtedness not exceeding the portion of its paid-up capital stock outstanding at the close of the ar, which the gross amount of its income for the year from busi-ss transacted and capital invested within the United States and y of its Territories, Alaska, and the District of Columbia, bears to e gross amount of its income derived from all sources within and thout the United States; (seventh) the amount paid by it within e year for taxes imposed under the authority of the United States any State or Territory thereof, and separately the amount so paid it for taxes imposed by the government of any foreign country as ondition to carrying on business therein; (eighth) the net income such corporation, joint stock company or association, or insurance npany, after making the deductions in this section authorized. l such returns shall as received be transmitted forthwith by the llector to the Commissioner of Internal Revenue.

Fourth. Whenever evidence shall be produced before the Com-ssioner of Internal Revenue which in the opinion of the commis-ner justifies the belief that the return made by any corporation, nt stock company or association, or insurance company is incor-t, or whenever any collector shall report to the Commissioner of ternal Revenue that any corporation, joint stock company or asso-

ciation, or insurance company has failed to make a return as required by law, the Commissioner of Internal Revenue may require from the corporation, joint stock company or association, or insurance company making such return, such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the Commissioner of Internal Revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized, by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint stock company or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the Commissioner of Internal Revenue may also invoke the aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the
21 production of such books and papers. Upon the information so acquired the Commissioner of Internal Revenue may amend any return or make a return where none has been made. All proceedings taken by the Commissioner of Internal Revenue under the provisions of this section shall be subject to the approval of the Secretary of the Treasury.

Fifth. All returns shall be retained by the Commissioner of Internal Revenue, who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add one hundred per centum of such tax, and in case of a refusal or neglect to make a return or to verify the same as aforesaid he shall add fifty per centum of such tax. In case of neglect occasioned by the sickness or absence of an officer of such corporation, joint stock company or association, or insurance company, required to make said return, or for other sufficient reason, the collector may allow such further time for making and delivering such return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed, unless the refusal, neglect, or falsity is discovered after the date for payment of said taxes, in which case the amount so added shall be paid by the delinquent corporation, joint stock company or association, or insurance company, immediately upon notice given by the collector. All assessments shall be made and the several corporations, joint stock companies or associations, or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by

the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.

Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such.

Seventh. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken, or report made under this section except upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court.

22 Eighth. If any of the corporations, joint stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinafter specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars.

Any person authorized by law to make, render, sign, or verify any return, who makes any false or fraudulent return, or statement, with intent to defeat or evade the assessment required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

All laws relating to the collection, remission, and return of internal-revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Jurisdiction is hereby conferred upon the circuit and district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books as aforesaid, shall reside, to compel such attendance, production of books, and testimony by appropriate process.

ARTICLE 1.

The attention of collectors and others is specially called to the fact that the tax imposed by this section of the law applies to all corpora-

tions, joint-stock companies, associations, or insurance companies described (except those specifically exempted), without reference to the kind of business carried on, and that the tax is to be computed upon the net income of such corporations, joint-stock companies, associations, and insurance companies, which shall be calculated by subtracting from the gross income received from all sources during the year certain deductions specifically set forth in the statute.

Every corporation, joint-stock company, association, or insurance company not specifically enumerated as exempt shall make the return required by law, whether it may have net income liable to tax or not.

In the case of corporations, joint-stock companies, associations, or insurance companies organized under the authority of the United States or any State or Territory thereof, including Alaska and District of Columbia, such net income relates not only to the business carried on within the confines of the United States, but to income received from business transacted in any foreign country as well. In case of corporations, joint-stock companies, and associations organized under the authority of foreign countries the terms "Gross income," "Net income," and "Authorized deductions" relate only to business transacted within the United States or any State or Territory thereof.

ARTICLE 2.—*Gross Income.*

The following definitions and rules are given for determining the gross income of the various classes of corporations:

1 A. *Banks and other financial institutions.*—Gross income consists of the gross revenue derived from the operation and management of the business and property of the corporation making the return, together with all amounts of income (including dividends received on stock of other corporations, joint-stock companies, associations, and insurance companies subject to this tax) derived from all other sources, as shown by the entries on its books from January 1 to December 31 of the year for which return is made.

23

1 B. *Insurance companies.*—Same as 1 A above.

2. *Transportation companies.*—Same as 1 A above.

3. *Manufacturing companies.*—Gross income received during the year from all sources will consist of the total amount, ascertained through an accounting, that shows the difference between the price received for the goods as sold and the cost of such goods as manufactured. The cost of goods manufactured shall be ascertained by an addition of a charge to the account of the cost of goods as manufactured during the year of the sum of the inventory at beginning of the year and a credit to the account of the sum of the inventory at the end of the year. To this amount should be added all items of income received during the year from other sources, including dividends received on stock of other corporations, joint-stock companies, associations, and insurance companies subject to this tax. In the determination of the cost of goods manufactured and sold as above such cost shall comprehend all charges for maintenance and operation of manufacturing plant, but shall not embrace allowances for deprecia-

tion of property nor for losses sustained which are to be taken account of in ascertaining the net income subject to tax under the proper heading in the authorized deductions.

4. *Mercantile companies.*—Gross amount of income received during the year from all sources consists of the total amount ascertained through inventory, or its equivalent, which shows the difference between the price received for goods sold and the cost of goods purchased during the year, with an addition of a charge to the account of the sum of the inventory at beginning of the year and a credit to the account of the sum of the inventory at the end of the year. To this amount should be added all items of income received during the year from other sources inclusive of dividends received on stock of other corporations, joint-stock companies, associations, and insurance companies subject to this tax. In determining this amount no account shall be taken of allowances for depreciation of property, nor for losses sustained which are to be taken account of in ascertaining the net income subject to tax under the proper heading in the authorized deductions.

5. *Miscellaneous.*—Gross income consists of the gross revenue derived from the operation and management of the business and property of the corporation making the return, together with all amounts of income (including dividends received on stock of other corporations, joint-stock companies, associations, and insurance companies subject to this tax) derived from all other sources as shown by the entries on the books from January 1 to December 31 of the year for which return is made.

24 It will be noted from these definitions that gross income is practically the same as gross profits, the only difference being that gross income is more inclusive, embracing as it does not only gross profits of the corporation, joint-stock company and association itself, but also all amounts of income received from other sources. It is immaterial whether any item of gross income is evidenced by cash receipts during the year or in such other manner as to entitle it to proper entry on the books of the corporation from January 1 to December 31 for the year in which return is made.

Sale of capital assets.—In ascertaining income derived from the sale of capital assets, if the assets were acquired subsequent to January 1, 1909, the difference between the selling price and the buying price shall constitute an item of gross income to be added to or subtracted from gross income according to whether the selling price was greater or less than the buying price. If the capital assets were acquired prior to January 1, 1909, the amount of increment or depreciation representing the difference between the selling and buying price is to be adjusted so as to fairly determine the proportion of the loss or gain arising subsequent to January 1, 1909, and which proportion shall be deducted from or added to the gross income for the year in which the sale was made. But for the purpose of determining the selling price, as provided in this section, there shall be added to the price actually realized on sale any amount which has already been set aside and deducted from gross income by way of deprecia-

tion as defined in article 4 and has not been paid out in making good such depreciation on the property sold.

Where a corporation is engaged in carrying on more than one class of business, gross income derived from the different classes of business shall be ascertained according to the definitions above, applicable thereto.

ARTICLE 3.—*Net Income.*

Net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association, or trust company, all interest actually paid by it within the year on deposits." In case of corporations, joint stock companies, and associations organized under the laws of a foreign country, "the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country as a condition to carrying on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed.

The section further provides:

That in the case of a corporation, joint-stock company, or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained (by making like deductions) from the gross amount of its income received within the year from business transacted and its capital invested within the United States and any of its Territories, Alaska, and the District of Columbia.

Also that:

In the case of assessment insurance companies the actual deposit of sums with state or territorial officers, pursuant to law, as additions to guaranty or reserve fund, shall be treated as being payments required by law to reserve fund.

Also (third paragraph) that:

There shall be deducted from the amount of the net income of each of such corporations, joint-stock companies, or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars.

The net income, therefore, is the remainder of the gross income after making the specified deductions.

ARTICLE 4.—*Deductions.*

The specified deductions actually paid within the year, set forth in the statute and as described in article 3 preceding, shall include all proper items of expenses and charges under the respective heads as designated. The amount returned for ordinary and necessary expenses actually paid within the year out of income in maintenance and operation of the business and properties of the corporation should not, however, embrace allowances for depreciation of fixed property which are otherwise to be taken account of under the proper heading in the authorized deductions, nor expenses paid within the year and charged to such allowances for depreciation credited in the current year or in previous years. In ascertaining expenses proper to be included in the deductions to be made under this article, corporations carrying materials and supplies on hand for use should include in such expenses the charges for materials and supplies only to the amount that the same are actually disbursed and used in operation and maintenance during the year for which the return is made.

26 It is immaterial whether the deductions are evidenced by actual disbursements in cash, or whether evidenced in such other way as to be properly acknowledged by the corporate officers and so entered on the books as to constitute a liability against the assets of the corporation, joint-stock company, association, or insurance company making the return.

Losses.—The deduction for losses must be in respect of losses actually sustained during the year and not compensated by insurance or otherwise. It must be based upon the difference between the cost value and salvage value of the property or assets, including in the latter value such amount, if any, as has in the current or previous years been set aside and deducted from gross income by way of depreciation as defined in the following section and not been paid out in making good such depreciation.

Depreciation.—The deduction for depreciation should be the estimated amount of the loss, accrued during the year to which the return relates, in the value of the property in respect of which such deduction is claimed that arises from exhaustion, wear and tear, or obsolescence out of the uses to which the property is put, and which

loss has not been made good by payments for ordinary maintenance and repairs deducted under the heading of expenses of maintenance and operation or in the ascertainment of gross income. This estimate should be formed upon the assumed life of the property, its cost value, and its use. Expenses paid in any one year in making good exhaustion, wear and tear, or obsolescence in respect of which any deduction for depreciation is claimed must not be included in the deduction for expense of maintenance and operation of the property or in the ascertainment of gross income, but must be made out of accumulative allowances deducted for depreciation in current and previous years.

ARTICLE 5.—*Inventories.*

It will be noted that an inventory or its equivalent of materials, supplies, and merchandise on hand for use or sale at the close of each calendar year is essential in the case of certain corporations in order to determine the gross income, and in case of other corporations to determine their expenses of operation. Where such inventory or its equivalent was not taken at the close of the year 1908, a supplemental statement showing such inventory approximately must be submitted with the return on the regular form. Such supplemental statement shall be verified under oath by the treasurer or principal financial officer in submitting the same.

Where any item under any of the deductions is of an unusual nature a special explanatory note referring to such item shall be made and attached to the form at the appropriate place and made a part thereof by proper reference.

Paragraph 3 of said section 38 also provides:

and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice-president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations, joint stock companies or associations, and insurance companies, subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint stock company or association, or insurance company, has its principal place of business, or, in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of Treasury, shall prescribe.

Each return so made is required to set forth:

(*a*) The total amount of the paid-up capital stock of such corporations, joint-stock companies or associations, or insurance companies, outstanding at the close of the year;

(*b*) The total amount of bonded and other indebtedness of such

oration, joint-stock company or association, or insurance com-
y, at the close of the year;
) The gross amount of the income of such corporation, joint-
k company or association, or insurance company, received during
year from all sources, and if organized under the laws of a for-
country, the gross amount of its income received within the year
business transacted and capital invested within the United
es and any of its territories, Alaska, and the District of Columbia.
uch returns are also required to set forth the items claimed as
uctions (Article 4), also the net income after such deductions
been made.

ARTICLE 6.

Under the authority conferred by this act forms of return have
n prescribed, in which the various items specified in the law are
be stated.
Blank forms of this return will be mailed to collectors and should
furnished to every corporation, not expressly excepted, on or be-
January 1, 1910, and on or before January 1st of each year
reafter. Failure on the part of any corporation, joint-stock com-
y, association, or insurance company liable to this tax, to receive
lank form will not excuse it from making the return required by
, or relieve it from any penalties for failure to make the return in
prescribed time. Corporations not supplied with the proper
ns for making the return should make application therefor to
collector of internal revenue in whose district is located its prin-
al place of business. Each corporation should carefully prepare
return so as to fully and clearly set forth the data therein called

Bookkeeping.—No particular system of bookkeeping or account-
will be required by the Department. However, the business
transacted by corporations, joint-stock companies, associa-
tions, or insurance companies must be so recorded that each
and every item therein set forth may be readily verified by an
mination of the books and accounts, where such examination is
med necessary.
Calendar year.—As the law specifically provides that the tax im-
ed shall be computed on the net income during each "*calendar*
ar," returns of income based on any period other than the calendar
ar can not be accepted.
Corporations organized during the year or going into liquidation
ring the year should nevertheless render a sworn return on the
scribed form.

ARTICLE 7.

Collectors will see that as soon as each return made by any corpora-
n is received a record on Form 632 is made, setting out the name
the corporation making the return, the nature of the principal
siness transacted, the location of principal place of business, with
t income reported, and the date on which such return was re-
ived. The date of receipt in each case will be noted in the last

2
3

column of that form, in which column the list on which assessmen is made will also be noted. For this purpose the column so used ma be subdivided, or the date of receipt of such returns may be note in red ink over the date entered therein as to such assessment list.

Any collector will, whenever it appears advisable to do so, reque that a revenue agent be specially designated to collect and furnis this office with such other data as, in his judgment, is necessary t determine the actual amount of tax to be assessed against any corpo ration, joint-stock company, or association which under the law se forth in these regulations is required to make return.

Such returns are required to be made not later than March 1 o each year, and any failure to comply with the law in this regar should be at once reported by the collector to the Commissioner o Internal Revenue.

To enable collectors to determine whether all returns due hav been received, a careful canvass of each district should be made, an all corporations, joint-stock companies, and associations subject t the tax imposed should be listed as above directed.

ARTICLE 8.

For statistical purposes all such corporations, joint-stock com panies, and associations will be classified as follows:

CLASS A: *Financial and commercial.*—Including banks, bankin associations, trust companies, guaranty and surety companies, titl insurance companies, building associations (if for profit), and insu ance companies, not specifically exempt.

CLASS B: *Public service.*—Such as railroads, steamboat, ferryboa and stage-line companies; pipe-line, gas, and electric-light companies express, transportation, and storage companies; telegraph and tel phone companies.

CLASS C: *Industrial and manufacturing.*—Such as mining, lum
ber, and coke companies; rolling mills; foundry and machin
29 shops; sawmills; flour, woolen, cotton, and other mills; manu
facturers of cars, automobiles, elevators, agricultural imple ments, and all articles manufactured wholly or in part from meta wood, or other material; manufacturers or refiners of sugar, molasse sirups, or other products; ice and refrigerating companies; slaughte house, tannery, packing, or canning companies, etc.

CLASS D: *Mercantile.*—Including all dealers (not otherwis classed as producers or manufacturers) in coal, lumber, grain, prod uce, and all goods, wares and merchandise.

CLASS E: *Miscellaneous.*—Such as architects, contractors, hotel theater, or other companies, or associations, not otherwise classed.

When classified as above indicated the names of the various cor porations, companies, and associations will be listed alphabetically and will be numbered consecutively (commencing with No. 1 in *eac* class), and in forwarding returns or papers subsequently rendered o submitted by such corporations or companies collectors will see tha the same have placed thereon the designating class letter and numbe corresponding with those noted on the lists herein required to b furnished.

ARTICLE 9.—*Examination of Books, etc., by Revenue Agent.*

Paragraph 4 of said section 38 provides:

Fourth. Whenever evidence shall be produced before the Commissioner of Internal Revenue which in the opinion of the commissioner justifies the belief that the return made by any corporation, joint stock company or association, or insurance company, is incorrect, or whenever any collector shall report to the Commissioner of Internal Revenue that any corporation, joint stock company or association, or insurance company has failed to make a return as required by law, the Commissioner of Internal Revenue may require from the corporation, joint stock company or association, or insurance company making such return such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the Commissioner of Internal Revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized, by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint stock company or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the Commissioner of Internal Revenue may also invoke the aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the production of such books and papers. Upon the information so acquired the Commissioner of Internal Revenue may amend any return or make a return where none has been made. All proceedings taken by the Commissioner of Internal Revenue under the provisions of this section shall be subject to the approval of the Secretary of the Treasury.

30 ARTICLE 10.—*Assessment and Collection of Tax, etc.*

Paragraph 5 of said section 38 provides:

Fifth. All returns shall be retained by the Commissioner of Internal Revenue, who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add one hundred per centum of such tax, and in case of a refusal or neglect to make a return or to verify the same as aforesaid he shall add fifty per centum of such tax. In case of neglect occasioned by the sickness or absence of an officer of such corporation, joint stock company or association, or insurance company, required to make said return, or for other sufficient reason, the collector may allow such further time for making and delivering such return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed unless the refusal, neglect, or falsity is discovered

after the date for payment of said taxes, in which case the amount so added shall be paid by the delinquent corporation, joint stock company or association, or insurance company, immediately upon notice given by the collector. All assessments shall be made and the several corporations, joint stock companies or associations, or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.

Upon the receipt and verification of the returns rendered, the tax as ascertained to be due will be assessed as above prescribed; and notice of such assessment will be given and subsequent demand made (if necessary) on Forms 17 and 21, respectively.

In case of failure to make returns within the time and manner required by the statute, or where the return rendered is found or believed to be incorrect, action in such cases will be taken, as provided in paragraph 4 of the law.

The additional tax imposed by paragraph 5 of the law for failure to make the required return, or for making a false or fraudulent return, will in all cases be assessed as therein provided.

ARTICLE 11.—*Returns to Constitute Public Records.*

Paragraph 6 of said section 38 provides:

Sixth. When the assessment shall be made, as provided in this sections, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the
31 office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such.

ARTICLE 12.—*Penalties.*

Paragraphs 7 and 8 of section 38 provide:

Seventh. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not

provided by law any document received, evidence taken, or report made under this section except upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court.

Eighth. If any of the corporations, joint stock companies or associations, or insurance companies, aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars.

Any person authorized by law to make, render, sign, or verify any return who makes any false or fraudulent return, or statement, with intent to defeat or evade the assessment required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

ARTICLE 13.—*Certain Revenue Laws Made Applicable, and Jurisdictions Conferred on United States Courts to Compel Attendance of Witnesses, etc.*

Paragraph 8 further provides:

All laws relating to the collection, remission, and refund of internal-revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Jurisdiction is hereby conferred upon the circuit and district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books, as aforesaid, shall reside, to compel such attendance, production of books, and testimony by appropriate process.

ARTICLE 14.—*Collection of Tax.*

The tax assessed under the provisions of this act will be collected and will be receipted for on Form 1, as in the case of other assessed taxes. Unless paid within the time fixed by the statute, notice and demand should be at once issued, and, in case of nonpayment, distraint proceedings should be instituted without delay.

ROYAL E. CABELL,
Commissioner.

Approved:

FRANKLIN MACVEAGH,
Secretary of the Treasury.

32 PLAINTIFF'S EXHIBIT B.

Form No. 638.

To be Filled in by Collectors.

List No. —.
Class ——.
—— District of ——.

To be Filled in by Internal Revenue Bureau.

Assessment List —— —, 19—.
Page —, Line —.
Date received and filed —— —, 19—.

United States Internal Revenue.

Return of Annual Net Income.

(Section 38, Act of Congress Approved August 5, 1909.)

Miscellaneous Corporations.

Return of net income received during the Year ending December 31, 19—, by —— ——, a corporation, the principal place of business of which is located at —— in the State of ——.

1. Total amount of paid-up stock outstanding at close of year ..... $——
2. Total amount of bonded or other indebtedness outstanding at close of year..... $——
3. Gross Income (See Note A)..... $——

Deductions.

4. Total amount of all the ordinary and necessary expenses of maintenance and operation of the business and properties of the corporation (see Note B)..... $——
5. (*a*) Total amount of loss sustained January 1 to December 31.. $——
   (*b*) Total amount of depreciation, January 1 to December 31.. $——
   Total (see Note B)..... $——
6. Total amount of interest January 1 to December 31 on bonded indebtedness to an amount not to exceed amount of paid-up capital at close of year (see Note B)... $——

7. (*a*) Total taxes paid January 1 to December 31 imposed under authority of the United States or any State or Territory thereof ..... $———
(*b*) Foreign taxes paid ..... $———
Total (see Note B) ..... $———

8. Amount received by way of dividends upon stock of other corporations, joint stock companies, associations, and insurance companies subject to this tax ..... $———
Total Deductions ..... $———

9. Net Income ..... $———
10. Specific deduction from net income allowed by law ... $5,000.00
11. Amount on which tax at one per centum is to be calculated ..... $———

STATE OF ——,
County of ——, *To wit:*

—— ——, President, and —— ——, Treasurer, of the —— corporation, whose return of annual net income is set forth above, being severally duly sworn, each for himself, deposes and says that the foregoing report and the several items therein set forth are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deduction, whatsoever received from all sources by the said corporation during the year stated and that the net income therein set forth is the full amount on which tax is proper to be assessed.

—— ——, *President.*
—— ——, *Treasurer.*

Sworn and subscribed to before me this — day of ——, 19—.
—— ——. [SEAL.]

NOTE A.—Gross income shall consist of the total of the gross revenue derived from the operation and management of its business and properties, together with all amounts of income from other sources, including dividends on stock of other organizations subject to this special excise tax received, as shown by entries upon its books from January 1 to December 31 of the year for which return is made.

NOTE B.—The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered as such on its books from January 1 to December 31 of the year for which return is made.

☞NOTE C.—This form, properly filled out and executed, must be in the hands of the Collector of Internal Revenue for the district

in which is located the principal office of the corporation makin the return, on or before March 1.

33 [Endorsed:] Form No. 638. U. S. Internal Revenu Return of Annual Net Income. (Sec. 38, Act of Congres August 5, 1909.) Miscellaneous Corporations. Return of net i come received during the year ending December 31, 19—, by — a corporation, the principal place of business of which is located —— in the State of ——. —— Collection District, State of — Fred von Baumbach, Collector of Internal Revenue, St. Paul, Min

34 And thereupon, upon application of said Solicitors a Wr of Subpœna was duly issued out of said Court and under th seal thereof duly vested, and in the words and figures following, t wit:

35 (Original.)

UNITED STATES OF AMERICA,
District of Minnesota, Fifth Division:

The President of the United States of America to Clark Iron Com pany and John G. Williams, William Alden Smith, Emily Clark, Charles R. Slight, and Frank Jewell, the Directors of sai Clark Iron Company, and Frank Jewell, as President, John G Williams, as Vice President, and Charles R. Slight, as Secretar and Treasurer of said Company, Greeting:

You are hereby commanded to be and appear at Rules, to be hel at the office of the Clerk of the Circuit Court of the United State for the District of Minnesota on the first Monday of April next, at th City of Duluth, then and there to answer the Bill of Complaint o Oscar Mitchell citizen of the State of Minnesota, filed against you o the 10th day of February, A. D. 1910, hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of th Supreme Court of the United States, the 10th day of February 191

Issued at my office in the City of Duluth, under the seal of sai Circuit Court, the day and year last aforesaid.

[Seal of U. S. Circuit Court.]

HENRY D. LANG, *Clerk,*
By THOS. H. PRESSNELL, *Deputy.*

Memorandum: The above named defendants to enter their appea ance in this suit in the Clerk's office aforesaid, on or before the da at which this writ is returnable; otherwise the bill may be taken p confesso.

HENRY D. LANG, *Clerk,*
By THOS. H. PRESSNELL, *Deputy.*

WASHBURN, BAILEY & MITCHELL,
Complainant's Solicitors.

Endorsed: Chancery Subpœna. Returned by the United Stat Marshal and filed. Henry D. Lang, Clerk, By Thos. H. Pressnel Deputy.

36 And afterwards towit, on the 11th day of February, A. D. 1910, came the defendants and filed in the clerk's office of said Court their Demurrer to the Bill of Complaint in the words and figures following, towit:

In the Circuit Court of the United States, District of Minnesota, Fifth Division.

OSCAR MITCHELL, Plaintiff,

vs.

CLARK IRON COMPANY and JOHN G. WILLIAMS, WILLIAM ALDEN Smith, Emily J. Clark, Charles R. Sligh, and Frank Jewell, the Directors of said Clark Iron Company, and Frank Jewell, as President, John G. Williams, as Vice President, and Charles R. Sligh, as Secretary and Treasurer, of said Company, Defendants.

Demurrer.

The Demurrer of Clark Iron Company and Others, the Defendants Above Named, to the Bill of Complaint of Oscar Mitchell, Complainant.

These defendants by protestation, not confessing nor acknowledging all or any of the matters and things in the said bill of complaint contained, to be true in such manner and form as the same are therein and thereby set forth and alleged, demur to the said bill, and for cause of demurrer show: That it appears on the face of said bill of complaint that the complainant is not entitled to the relief prayed for in said bill of complaint, or any part thereof; but that the act set forth in said bill of complaint is in all respects constitutional and valid.

Wherefore, these defendants demur to the said bill, and to all matters and things therein contained, and pray the judgment
37 of this honorable court whether they shall be compelled to make any further or other answer thereto, and pray to be dismissed with their reasonable costs in this behalf sustained.

JOHN G. WILLIAMS,
Solicitor for Defendants.

I certify that in my belief the foregoing demurrer of the defendants above named to the bill of complaint of Oscar Mitchell, is well founded in law, and proper to be filed in the above cause.

JOHN G. WILLIAMS,
Solicitor for Defendants.

STATE OF MINNESOTA,
County of St. Louis, ss:

John G. Williams, one of the above named defendants, on oath says that he has read the foregoing demurrer to the bill of complaint of Oscar Mitchell in this suit, and that the same is not interposed for the purpose of delaying the said suit or other proceedings therein.

JOHN G. WILLIAMS.

Subscribed and sworn to before me this 11th day of Februa
1910.

ARTHUR HOWELL,
Notary Public, St. Louis County, Minnesota.

My commission expires May 31, 1913.

38 Endorsed: Demurrer. Filed February 11th, 1910. Hen
D. Lang, Clerk, By Thos. H. Pressnell, Deputy.

And thereafter on the 12th day of February, 1910, the followi
Order Sustaining Demurrer was filed of record in said cause, in wo
and figures following, towit:

In the Circuit Court of the United States, District of Minneso
Fifth Division.

In Equity. No. 734.

OSCAR MITCHELL, Plaintiff,
vs.
CLARK IRON COMPANY and JOHN G. WILLIAMS, WILLIAM ALD
Smith, Emily J. Clark, Charles R. Sligh and Frank Jewell, t
Directors of said Clark Iron Company, and Frank Jewell, as Pre
dent, John G. Williams, as Vice-President, and Charles R. Slig
as Secretary and Treasurer, of said Company, Defendants.

This matter came on for hearing before the court on the demur
of the defendant to the bill of complaint of the plaintiff, John
Williams, Esq., appearing as solicitor for the defendants in supp
of said demurrer, and Washburn, Bailey & Mitchell appearing
solicitors for the plaintiff in opposition thereto.

The court having heard counsel, on due consideration,

It is ordered that said demurrer be, and the same is hereby s
tained, and the plaintiff having declined to amend his complaint or
re-plead,

It is ordered that decree be entered herein dismissing the said b
of complaint on the merits, without costs, the same having been
pressly waive- by the defendants.

Dated Duluth, Minn., February 12th, 1910.

PAGE MORRIS, *Judge.*

Endorsed: Order Sustaining Demurrer. Filed February 12
1910. Henry D. Lang, Clerk, By Thos. H. Pressnell, Deputy.

And on the same day, towit, 12th day of February, 1910, the D
cree in said cause was filed with said clerk, in the words and figu
following, towit:

39 In the Circuit Court of the United States, District of Minnesota, Fifth Division.

In Equity. No. 734.

OSCAR MITCHELL, Plaintiff,

vs.

CLARK IRON COMPANY and JOHN G. WILLIAMS, WILLIAM ALDEN Smith, Emily J. Clark, Charles R. Sligh, and Frank Jewell, the Directors of said Clark Iron Company, and Frank Jewell, as President, John G. Williams, as Vice-President, and Charles R. Sligh, as Secretary and Treasurer, of said Company, Defendants.

This case having come on to be heard this 12th day of February, A. D. 1910, upon the demurrer of the defendant to the bill of complaint of the plaintiff, and the court having considered said demurrer and having sustained the same, and the plaintiff having declined to amend his complaint, or to replead, and the defendants having expressly waived costs,

It is ordered, adjudged and decreed that the said bill of complaint herein be, and the same is hereby dismissed upon the merits, without costs.

PAGE MORRIS, *Judge.*

Endorsed: Decree. Filed February 12, 1910. Henry D. Lang, Clerk, By Thos. H. Pressnell, Deputy.

That still further on said day, towit, 12th day of February, 1910, there was filed of record in said cause an Appeal and Order allowing the same, in the words and figures following, towit:—

40 In the Circuit Court of the United States, District of Minnesota, Fifth Division.

In Equity. No. 734.

OSCAR MITCHELL, Plaintiff,

vs.

CLARK IRON COMPANY and JOHN G. WILLIAMS, WILLIAM ALDEN Smith, Emily J. Clark, Charles R. Sligh, and Frank Jewell, the Directors of said Clark Iron Company, and Frank Jewell, as President, John G. Williams, as Vice-President, and Charles R. Sligh, as Secretary and Treasurer, of said Company, Defendants.

The above named plaintiff, conceiving himself aggrieved by the decree made and entered on the 12th day of February, A. D. 1910 in the above entitled cause, does hereby appeal from the said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal may be allowed and that a transcript of the

record, proceedings and papers upon which the said order and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, February 12th 1910.

WASHBURN, BAILEY, MITCHELL,
Solicitors for the Plaintiff,
709 *Lonsdale Bldg., Duluth, Minnesota.*

The foregoing claim of appeal is allowed.

Dated, February 12th 1910.

PAGE MORRIS,
District Judge.

41 Endorsed: Appeal and Order Allowing the Same. Filed February 12th, 1910. Henry D. Lang, Clerk, By Thos. H. Pressnell, Deputy.

That on the same day, towit, the 12th day of February, 1910, there was filed of record in said cause the Assignment of Error on Appeal, in words and figures following, towit:

In the Circuit Court of the United States, District of Minnesota, Fifth Division.

In Equity. No. 734.

OSCAR MITCHELL, Plaintiff,
vs.
CLARK IRON COMPANY and JOHN G. WILLIAMS, WILLIAM ALDEN Smith, Emily J. Clark, Charles R. Sligh, and Frank Jewell, the Directors of said Clark Iron Company, and Frank Jewell, as President, John G. Williams, as Vice President, and Charles R. Sligh, as Secretary and Treasurer, of said Company, Defendants.

Assignment of Error.

And now on the 12th day of February, A. D. 1910 comes the above named plaintiff by Washburn, Bailey & Mitchell his solicitors and says:

That the decree in the above entitled cause is erroneous and against the just rights of said plaintiff for the following reason: That the demurrer of the defendants should have been over ruled for the reason that the statute referred to in the Bill of Complaint is unconstitutional and void for the reasons therein set forth.

Wherefore Said plaintiff prays that the said decree be reversed and that said court may be directed to over rule said demurrer, and unless some defense good in law is interposed, to enter a decree in accordance with the prayer of said bill.

WASHBURN, BAILEY, MITCHELL,
Solicitors for the Plaintiff,
709 *Lonsdale Bldg., Duluth, Minnesota.*

Endorsed: Assignment of Error. Filed February 12th, 1910. Henry D. Lang, Clerk, By Thos. H. Pressnell, Deputy.

42 And on the same day towit, on the 12th day of February, 1910, there was filed a Bond on Appeal in said cause, in words and figures following, towit:

In the Circuit Court of the United States, District of Minnesota, Fifth Division.

In Equity. No. 734.

OSCAR MITCHELL, Plaintiff,

vs.

CLARK IRON COMPANY and JOHN G. WILLIAMS, WILLIAM ALDEN Smith, Emily J. Clark, Charles R. Sligh, and Frank Jewell, the Directors of said Clark Iron Company, and Frank Jewell, as President, John G. Williams, as Vice President, and Charles R. Sligh, as Secretary and Treasurer, of said Company, Defendants.

Know all men by these presents, That we, Oscar Mitchell as principal and W. D. Bailey and A. C. Gillette as sureties are held and firmly bound unto the above named defendants in the full and just sum of Five Hundred Dollars ($500.) to be paid to the said defendants their successors, executors, administrators or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with out seals and dated this 12th day of February, A. D. 1910.

Whereas On the 12th day of February, A. D. 1910 a decree was rendered in the above entitled action against the above named plaintiff and in favor of the above named defendants, dismissing the Bill of Complaint upon the merits and the said plaintiff having taken and had allowed an appeal and filed a copy thereof in the clerk's office of the said court, to reverse the said decree and a citation directed to the said defendants, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be held in the city of Washington in the District of Columbia on the 19th day of February, 1910, having been issued,

Now, the condition of the above obligation is such that if
43 the said Oscar Mitchell shal-, prosecute said appeal to effect and answer all costs, if he fail to make the said plea good, then the above obligation to be void, else to remain in full force and virtue.

OSCAR MITCHELL. [SEAL.]
W. D. BAILEY. [SEAL.]
A. C. GILLETTE. [SEAL.]

Signed, Sealed and Delivered in presence of
F. M. EMANUELSON.
C. M. VAN NORMAN.

Approved by
PAGE MORRIS, *Judge*.

February 12th, 1910.

Endorsed: Bond on Appeal. Filed February 12, 1910. Henry D. Lang, Clerk, By Thos. H. Pressnell, Deputy.

That on the same day, towit, on the 12th day of February, A. D. 1910, there was issued an original Citation on Appeal, with proof of service of same, in said cause, in the words and figures following, towit:

44 In the Supreme Court of the United States.

OSCAR MITCHELL, Appellant,

vs.

CLARK IRON COMPANY and JOHN G. WILLIAMS, WILLIAM ALDEN Smith, Emily J. Clark, Charles R. Sligh and Frank Jewell, the Directors of said Clark Iron Company, and Frank Jewell, as President, John G. Williams, as Vice President, and Charles R. Sligh, as Secretary and Treasurer, of said Company, Appellees.

The United States of America to Clark Iron Company and John G. Williams, William Alden Smith, Emily J. Clark, Charles R. Sligh and Frank Jewell, the Directors of said Clark Iron Company, and Frank Jewell as President, John G. Williams as Vice President and Charles R. Sligh as Secretary and Treasurer of said Company:

You are hereby cited and admonished to be and appear at the session of the United States Supreme Court to be holden at the city of Washington in the District of Columbia on the 19th day of February, A. D. 1910, pursuant to an appeal duly allowed and filed in the Clerk's office of the Circuit Court of the United States for the District of Minnesota, Fifth Division, wherein Oscar Mitchell is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States this 12th day of February, in the year of our Lord 1910 and of the Independence of the United States the One Hundred and Thirty-fourth.

PAGE MORRIS, *Judge.*

45 I hereby this 12th day of February, A. D. 1910, accept due and personal service of the foregoing citation on behalf of all of the Appellees named therein.

JOHN G. WILLIAMS,
Solicitor for Appellees.

46 [Endorsed:] Entered No. —. United States Supreme Court. Oscar Mitchell, Plaintiff, against Clark Iron Co., et al., Defendant. Citation on Appeal. Filed February 12, 1910. Henry D. Lang, Clerk. By Thos. H. Pressnel, Deputy Clerk. Washburn, Bailey & Mitchell, Attorneys for Pl'ff, 709 Lonsdale Building, Duluth, Minn.

47 Endorsed: Citation on Appeal. Filed February 12, 1910. Henry D. Lang, Clerk, By Thos. H. Pressnell, Deputy.

48 UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Fifth Division.

I, Henry D. Lang, Clerk of said Circuit Court, do hereby certify and return to the Honorable, the Supreme Court of the United States, that the foregoing, consisting of — pages, numbered consecutively from 1 to — inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said Court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In witness whereof, I have hereunto set my hand, and affixed the seal of said Court, at Duluth, in the District of Minnesota, this 12th day of February, A. D. 1910.

[U. S. Circuit Court Seal, Dist. of Minnesota, Fifth Division.]

HENRY D. LANG, *Clerk*,
By THOS. H. PRESSNELL, *Deputy*.

[Endorsed:] No. —. United States Circuit Court, District of Minnesota, — Division. Oscar Mitchell vs. Clark Iron Company et al., Defendant. Record on Appeal.

Endorsed on cover: File No. 22,026. Minnesota C. C. U. S. Term No. 800. Oscar Mitchell, appellant, vs. Clark Iron Company et al. Filed February 17th, 1910. File No. 22,026.

No. 800.

Supreme Court of the United States

OCTOBER TERM, 1909.

OSCAR MITCHELL, *Appellant,*

vs.

CLARK IRON COMPANY and JOHN G. WILLIAMS, WILLIAM ALDEN SMITH, EMILY J. CLARK, CHARLES R. SLIGH and FRANK JEWELL, the Directors of said Clark Iron Company, and FRANK JEWELL, as President, JOHN G. WILLIAMS as Vice President and CHARLES R. SLIGH as Secretary and Treasurer of said Company,

Appellees.

MOTION TO ADVANCE.

J. L. WASHBURN,
W. D. BAILEY,
OSCAR MITCHELL,
Solicitors for Appellant.

Supreme Court of the United States

OCTOBER TERM, 1909.

OSCAR MITCHELL, *Appellant,*

vs.

CLARK IRON COMPANY and JOHN G. WILLIAMS, WILLIAM ALDEN SMITH, EMILY J. CLARK, CHARLES R. SLIGH and FRANK JEWELL, the Directors of the Clark Iron Company, and FRANK JEWELL, as President, JOHN G. WILLIAMS as Vice President and CHARLES R. SLIGH as Secretary and Treasurer of said Company,

Appellees.

Comes now the above named appellant and moves the court to advance the above entitled cause and set it down for hearing with other causes now pending in this court involving the question of the constitutionality of the Act of Congress entitled:--"An act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," which was approved and signed by the President of the United States on the 5th day of August, A. D. 1909, which causes, the undersigned are informed, are set for hearing on March 14th, 1910.

This motion is made for the reason that the only question involved herein is the question of the validity of said Act of Congress in so far as it applies to a corporation whose only source of income is rent or royalty paid for the privilege of mining iron ore from land owned by it and the causes above referred to involved, as the undersigned are informed and believe, the question of the constitutionality of said Act of Congress and it is believed it will subserve the cause of justice and faciliate the labors of this court to have the above entitled cause argued and submitted with the other causes involving the question of the constitutionality of said Act of Congress.

Dated, February 14th, 1910.

John Mashburn

W. D. Bailey

Oscar Mitchell

Solicitors for Appellant.

As representing the appellees in the above entitled proceeding, I agree to the immediate consideration of the foregoing motion and consent to the making of the order therein asked for and join in requesting the court to set this cause down for hearing with the other causes above referred to.

Dated, February 14th, 1910.

John G. Williams

Solicitor for above named Appellees.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1909.

OSCAR MITCHELL,
Appellant,

vs.

CLARK IRON COMPANY AND JOHN G. WILLIAMS, WILLIAM ALDEN SMITH, EMILY J. CLARK, CHARLES R. SLIGH AND FRANK JEWELL, THE DIRECTORS OF THE CLARK IRON COMPANY, AND FRANK JEWELL AS PRESIDENT, JOHN G. WILLIAMS AS VICE-PRESIDENT, AND CHARLES R. SLIGH AS SECRETARY AND TREASURER OF SAID COMPANY,
Appellees.

No. 800.

APPEAL FROM CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

STATEMENT OF THE CASE.

The defendant Clark Iron Company is a corporation organized under the laws of the State of Minnesota, with its principal place of business in the city of Duluth, in the Fifth Division of the District of Minnesota, and is entitled, under the laws of said State, to own and hold real estate. The

other defendants are officers and directors of the said corporation. (Folio 3 of Transcript.)

The defendant company is the owner of 280 acres of land in said State, described in the bill of complaint. (Folio 3 of Transcript.) These lands have been explored for iron, iron ore discovered therein, and the same have been leased for some years to other persons and corporations for iron mining purposes, and the sole business of the defendant corporation has been to watch over and care for said lands and to collect its rentals therefrom and distribute the same, by means of dividends, to its stockholders. Its sole income for several years has been derived from such rentals or royalties based upon the quantity of iron ore mined and removed from said lands by its lessees. (Folio 3 of Transcript.)

The plaintiff is a stockholder in said corporation, and brought this suit for himself and others similarly situated, to enjoin the defendant corporation and its officers from making the returns and paying the taxes provided in Section 38 of the Act of Congress of August 5, 1909, entitled: "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," and from making voluntary compliance with said Act, which the officers and directors had determined to do in order to avoid the risks and penalties provided in the Act. The suit is based upon the alleged unconstitutionality and invalidity of the Act, as charged in the bill. (Folios 7 to 14 of Transcript.)

All the jurisdictional facts are duly alleged. The defendants appeared and filed a general demurrer, which was sustained and decree entered. (Folios 31-33 of Transcript.)

The plaintiff appealed to this Court and assigned error that the demurrer should have been overruled, for the reason that the statute of the United States referred to in the complaint is unconstitutional and void for the reasons stated in the bill. (Folios 33 and 34 of Transcript.)

The cause was docketed as No. 800, Transcript of Record, was duly printed, and upon motion the same was, by order of this Court, made on February 28th, advanced upon the Calendar to March 14th, to be heard with other cases involving the validity of said Section 38, commonly known as the Corporation Tax Law, with leave to file a brief in this case.

ASSIGNMENT OF ERROR.

The Circuit Court erred, and the decree of the Circuit Court is erroneous and against the just rights of this appellant because the demurrer of the defendants should not have been sustained, but should have been overruled; and the judgment of dismissal was, therefore, erroneous and should be reversed, for that the said statute referred to in the bill of complaint is unconstitutional and void, for the reasons and upon the grounds set forth therein, and therefore this appellant was entitled to the relief sought in his said suit.

ARGUMENT.

I.

The Circuit Court properly had jurisdiction. The bill shows equity, if Section 38 of the Revenue Act of August 5, 1909, is invalid. If that section, which is complete in itself, independent of the residue of the Act, is valid, then the demurrer was properly sustained. The question which this appeal brings before this Court is, therefore, the validity of that section, which imposes the duty upon corporations generally, including the defendant corporation, to make returns of their incomes, and exacts the payment of a tax thereon, and constitutes such returns public records.

Stated more narrowly, what is here involved is the validity of such requirements as to the defendant, Clark Iron

Company, under the admitted and uncontrovertible facts stated in the bill.

We charged in the bill, and here reiterate in briefer form, that the whole enactment of said Section 38, providing for this so-called corporation tax, is unconstitutional and void, in this:

(1) That, as an excise tax, the same is obnoxious to the provisions of Section 8, Article I, of the Constitution, which requires that "All duties, imposts and excises shall be uniform throughout the United States," in that the taxes authorized by the Act were neither intrinsically nor geographically uniform, but, on the contrary, were so unequal and partial as not to be within the taxing power of the United States, and to be violative, not only of said Section 8 of Article I of the Constitution, but of the spirit and intent of the whole instrument;

(2) That, as a tax upon the net income of corporations, it includes taxes upon the income of both real and personal property, and investments therein, including income from municipal bonds and other public securities; that such taxes are direct taxes and not apportioned by the Act as required by Sections 2 and 9 of Article I of the Constitution, and that insofar as the same embrace income from public securities, the tax is laid upon prohibitive subjects; that the whole section forms one entire and indivisible scheme of taxation, and that the said direct taxes are so intermingled with and inseparable from the other subjects of taxation that the whole enactment is unconstitutional and must fall together.

(3) That the tax, not being a valid excise tax levied with respect to the doing of any kind or class of business, nor upon the production or consumption or sale of any particular commodity or product or class thereof, nor upon the doing of any particular kind or class of business, even by a corporation, nor upon corporations deriving their existence by virtue of any laws of the United States, but being laid with

respect to the doing of any kind of business when done by a corporation, and with respect to the income of corporations only; that the same is, therefore, a tax upon the franchises of corporations granted by sovereign States and, as such, is obnoxious to Article X of the Constitution, and not within the taxing power of Congress.

(4) That because of the provisions for enormous and excessive penalties for failure to comply with its terms, intended to prevent or restrain parties taxed from contesting its validity, and as well for all the other reasons set forth, the act denies to the corporations taxed the equal protection of the laws, contrary to Section 1 of Article XIV of the Amendments to the Constitution; operates to deprive such corporations of their property without due process of law, contrary to Article V of the Amendments to the Constitution, and contravenes Article VIII of the Amendments, which provides that excessive fines shall not be imposed.

II.

We may concede that Congress has, under the Constitution, a broad field within which to exercise the power of taxation. There are, however, some things which it cannot tax. The manner in which the power shall be exercised, however, is controlled by two limitations. First, if the taxes be direct taxes, they must be apportioned among the States according to population. Second, if the taxes be in the nature of excises, imposts or duties, they must be uniform throughout the United States. Whatever tax is laid must come within one or the other of these provisions, and not contravene either of them.

See Opinion of Chief Justice Fuller, in Pollock vs. Farmers' Loan & Trust Company, on re-argument, 158 U. S., 601; Book 39 L. Ed., 1108, particularly on page 1119.

No attempt was made to apportion the taxes, and hence the taxes authorized by the act, if they are direct taxes, cannot be sustained. We defer consideration of that for a moment, for as Congress took pains to name the tax an excise tax (lest it might not otherwise be discovered), it is logical for us to consider first *whether the act is constitutional as laying a valid excise tax.*

Section 8 of Article I of the Constitution requires that, "All duties, imposts and excises shall be uniform throughout the United States." As an excise upon the transaction of business or any particular class of business, or the income therefrom, or from property owned by the corporations taxed, the discriminations are so glaring that it must be said that there is no pretense of intrinsic uniformity. The law does not operate with uniformity throughout the United States as an excise upon the doing of any act or class of acts, the conduct of some particular business or class of business, by whomsoever done, wheresoever done, according to its volume, or on any other uniform basis, because—

(1) A tax is laid on corporations only;

(2) No tax is laid on individuals or partnership firms, although doing the same kind of business and being competitors therein;

(3) Certain corporations mentioned in the act, formed for the profit and advantage of its members, are arbitrarily excepted from the operation of the law;

(4) No corporation whose income does not exceed five thousand dollars is required to pay any tax;

(5) A corporation holding stocks of any other corporations which are subject to the tax is not taxable upon the income or dividends received thereon. Whether such a corporation, if it held the stock of a score of other corporations, no one of which had a net income exceeding five

thousand dollars, would be required to pay a tax, is open to serious contention. It would seem clear that such holding company could hold the bulk of the stock in other corporations, and if such corporations' income but even slightly exceeded the five-thousand-dollar limit, so that they had in fact a nominal amount of tax to pay and thereby could certainly be said to be subject to the tax, the holding company would practically escape taxation.

(6) All sorts of inequalities are possible, and scarcely preventable, in the ascertainment of net income.

There can be no pretense of intrinsic uniformity as an excise tax upon business, nor if considered as an income tax.

The case of Spreckels Sugar Refining Company against McClain, Collector, 192 U. S., 397; 48 L. Ed., 496, has been relied upon to sustain the power of Congress to lay an excise tax upon the business of a corporation. The case is not an authority for any such contention. The act involved was one of the provisions of the "Act to provide ways and means to meet war expenditures, and for other purposes," which sought out many objects of taxation and laid taxes thereon by the various sections thereof. This case arose under Section 27 (See 30 Stats. at Large, 464), which laid a tax upon every person, firm or corporation carrying on or doing a business of refining petroleum or refining sugar.

In Pacific Insurance Company vs. Soule, Collector, 7 Wallace, 433, 19 L. Ed., 95, this Court defined an excise to be an inland imposition, sometimes upon the consumption of a commodity, sometimes upon the retail sale, sometimes upon the manufacturer, and sometimes upon the vendor. The case arose under the revenue act of 1864 as amended in 1866, by which, in the exigency and stress of the times, the Government levied a tax upon almost every conceivable object of taxation. Section 105 of the Act of 1864, 13 U. S. Stat. at Large, 276, provided for a tax of one and one-half per cent upon the gross receipts of pre-

miums or assessments for insurance from loss or damage by fire, or by the perils of the sea, made by every insurance company, whether inland, marine or fire, and by every association or individual engaged in the business of insurance against loss or damage by fire or by the perils of the sea and against every person, company or corporation who should issue tickets or contracts of insurance, etc., and against agents of foreign insurance companies. The law provided for a tax upon the business transacted. It laid an excise rate on the gross receipts of the business, by whomsoever done, whether by individual, partnership, corporation, association or agent. The tax was not a penalty fixed upon corporations for the privilege of doing business, nor a tax upon their corporate franchises. The law had none of the defects and inequalities of the act of 1909, and the latter act can draw no support from this case. It is also apparent that the Court in this case did give some force and effect to the question of *equality and uniformity*.

We are unwilling to believe that the Constitution dispenses with the principle of equality in the matter of taxation. Much of our trouble in both States and Nation has come by attempts to avoid or circumvent this principle. It is very popular with some people to tax other people if they themselves can escape. Legislation is too often hastily enacted to appease some temporary popular clamor or to advantage the controlling legislative faction in popular favor. Against all such legislation, the Constitution should be a bulwark of safety. If *equality* before the law, *equality* in bearing the burdens of government, *equality* in the levy and collection of taxes, and *equal* protection of the laws are to be abandoned, constitutional protection will become a fiction.

The contention, however, will be made that the provision of the Constitution requiring an excise tax to be uniform throughout the United States does not embrace the principle of equality in its operation on the individuals taxed,

but that geographical uniformity is all that is required. Knowlton vs. Moore, 178 U. S., 41; 44 L. Ed., 969, will doubtless be relied upon as authority for such contention. It is believed that nothing prior to that decision can be suggested as such authority. It is doubtful if the case can be said to go so far as to sustain the contention of geographical uniformity as applied to such a law as that now under consideration. The Government attorney claimed in the Knowlton case that "uniform throughout the United States" simply requires that whatever plan or method Congress adopts for laying taxes, the same plan must be made operative throughout the United States; that whenever a subject is taxed anywhere, it must be taxed everywhere throughout the United States, and at the same rate. If we may assume the above as indicating the definition of geographical uniformity as applied to an excise tax, it is apparent that the tax imposed by this law, treated as an excise on business or income or profits of business, or investment, is not even geographically uniform in its application; and what the Court said in the Knowlton case, as applied to the facts in that case, should not control here.

The tax is as glaringly lacking in geographical uniformity as in intrinsic uniformity as an excise tax. Suppose a certain class of business only had been taxed, and the tax was laid only when the business is done by a corporation, and suppose all such business to be done in one State by individuals, in another by firms and in another by corporations; would the excise apply with geographical uniformity as an excise on such business or income? Clearly, no. It is no different in its operation in that it applies to many or even all classes of business.

It is absolutely impossible to say that the tax operates as an excise with geographical uniformity in the different States or throughout the United States at large when a great and variable volume of the same business in different localities is not subjected to the excise. It will not save the

law for its sponsors to say that, under it, corporations (not now mentioning the exempted ones) are everywhere taxed upon their incomes and therefore the uniformity restriction of the Constitution has been complied with. Indeed, the only possible claim is that, not as an excise on business, or on any particular kind or class of business, but upon the doing of business by a corporation, does this law apply with even the faintest kind of uniformity. That, however, in the last analysis, simply means that as a tax on corporate franchises, the law applies with constitutional uniformity. It is, indeed, questionable whether uniformity will avail or is at all applicable to such a tax. Moreover, there are other constitutional objections to the tax as a tax upon corporate franchises, which will be considered in a subsequent paragraph.

We confidently assert that in all the annals of Congressional legislation and the construction thereof by this Court, there is not to be found such an act as the 1909 corporation tax section. It is an iniquitous measure, inspired by supposed political emergency; was hastily enacted, and depended upon juggling with the word "corporation" for favor in public opinion.

Corporations are everywhere existent and have largely supplanted partnerships, for good and salutary reasons, the most potent of which is the perpetuity of business and industrial enterprises, and the means offered for participation in the benefits thereof by many persons, including employees. We submit that, as an excise tax, the same is invalid not only as not being uniform throughout the United States, whether we say intrinsically or geographically, but because it is so fraught with discriminations, inequalities and arbitrary exemptions as to be without the taxing power, and is obnoxious to the fundamental principles of our Government.

Mr. Justice Brewer, in the case of Magoun vs. Illinois Trust & Savings Bank, 170 U. S., 283; L. Ed. Book 42, page 1037, with reference to the law then before the Court, said that, "Absolute equality is not obtainable, but where a tax directly, necessarily and intentionally creates inequality of burden, it then becomes imperative to find whether this inequality can find any constitutional justification."

This language is significant if applied to this case.

III.

THE TAXES IMPOSED BY THIS SECTION ARE NOT, HOWEVER, EXCISE TAXES. THEY ARE DIRECT TAXES. The fact that Congress labeled it a special excise tax does not make it so. This Court, in the Pollock case, said:

> "If a tax is a direct tax within the constitutional sense, the mere erroneous qualification of it as an excise will not take it out of the constitutional requirement as to apportionment."

This language was again quoted by the Court approvingly in the Knowlton case. That the substance, and not the shadow, determines the validity of the exercise of the power, is a maxim of this Court. If in substance and practical operation a tax is a direct tax, the form or manner of levying it does not change its character. Whether a tax is direct or indirect, within the meaning of the Constitution, depends upon its nature. A tax is not direct because it can be apportioned among the States; it is not an indirect one because it cannot fairly or without difficulty be apportioned. If direct, it must be apportioned. Whether this tax is called a franchise tax, an excise tax, or by whatsoever name, its burden is cast upon the income of property and business and, as such, at least so far as real and personal estate is

concerned, is a direct tax and must be apportioned. The wisdom of the Constitution is not on trial; if it were, it would doubtless be vindicated.

Pollock vs. Farmers' Loan & Trust Company, and Hyde vs. Continental Trust Company, 157 U. S., 429; 39 L. Ed., 759, and 159 U. S., 601; 39 L. Ed., 1108.

The tax imposed by this law is a tax upon the net income above the exemptions of all the corporations falling within its provisions. There is no exception as to sources of income. There are included rents, and income from real and personal estate, municipal bonds and other public securities —even the bonds of the United States. All kinds of investments for income are embraced in the law, including investments in real estate and personal property.

There are some things which are settled in this Court, and which are controlling here, viz: That taxes upon the income of real or personal estate are the same in effect as a tax on the property itself; that taxes laid upon income are equivalent to taxes upon the sources of such income, and that they are direct taxes and must be apportioned, or else they are unconstitutional, being obnoxious to Sections 2 and 9 of Article I of the Constitution; that taxes on the income of municipal bonds and other public securities, are upon prohibited subjects of taxation.

These questions we believe to have been forever settled in this Court by the decisions in the Pollock cases, which decisions were in harmony with a vast amount of authority submitted to and considered by the Court, and to a considerable extent reviewed in the opinions. And we do not deem these questions as open to discussion at this time. Certainly the Court will not again care to listen to elaborate argument, receive copious citations of authorities and again

go over these questions that have stood determined since the decisions in those cases. FURTHERMORE, THE SAME REASONS THAT IMPELLED THE COURT, ON THE SECOND HEARING OF THE POLLOCK AND HYDE CASES, TO DECLARE THE WHOLE ACT THEN UNDER CONSIDERATION VOID EXIST HERE WITH EVEN GREATER FORCE. It is as impossible here as it was there to separate any parts as valid from the enactment and say that Congress intended that they at least should stand although other provisions must fall. We here quote again the language of Chief Justice Shaw in the case of Warren vs. Charlestown, 2d Gray, 84, that:

> "If the different parts are so mutually connected with and dependent on each other as conditions, considerations or compensations for each other, as to warrant the belief that the legislature intended them as a whole, and if all could not be carried into effect the legislature would not pass the residue independent, and some parts are unconstitutional, all of the provisions which are thus dependent, conditional or connected must fall with them."

We quote again the language of Mr. Justice Matthews in Poindexter vs. Greenhow, 114 U. S., 279, wherein he said that:

> "While it is true that there may be cases where some part of the statute may be enforced as constitutional and another declared inoperative and void because unconstitutional, these are cases where the parts are so distinctly separable that each can stand alone, and where the Court is able to see and declare that the intention of the legislature was that the part pronounced valid should be enforceable even though the other part should fall."

And we here quote the language of Mr. Chief Justice Fuller in the decision in the Pollock case, wherein he said, at page 637 of the Official Edition, 1125 L. Ed.:

> "The tax imposed by Sections 27 to 37, inclusive, of the Act of 1894, so far as it falls on the income of realty and of personal property, being a direct tax within the meaning of the Constitution and therefore unconstitutional and void because not apportioned according to representation, all those sections constituting one entire scheme of taxation are necessarily invalid."

Under the authority of these cases, the law of 1909 must fall.

The defendant corporation, Clark Iron Company, has no other property except certain lands in the State of Minnesota, and no income save such as it receives by way of rentals or royalties from these lands, reserved to it under leases thereof made for iron mining purposes, which authorize mining operations on, and the removal of iron ore from the lands, the revenue therefrom being based upon the quantity mined and removed. Mining leases of this kind are of ancient origin and widespread existence. Under such instruments, coal, iron, salt and other minerals have been mined, and stone quarried, for generations. They have received judicial construction in many courts, including this Court. Their character received careful consideration in the Supreme Court of Minnesota in the case of State vs. Mabel Evans, reported in 99 Minn., 223, 108 N. W. Rep., 958, where the question of the character of such an instrument, whether evidencing a lease or sale, was determinative of its validity by reason of certain restrictions in the State Constitution. The Court, reviewing the voluminous list of authorities submitted, held that the customary method of developing, working and obtaining profits from

mineral lands at the time of the adoption of the Constitution of the State was by means of mineral leases similar to those in question; that the removal of ore from the demised lands was not deemed waste, but a reasonable means of securing the profits of the lands; that at common law a lessee for life or years was authorized to operate and take the profits of open mines, although the lease was silent concerning them, and might take the profits of new mines not opened, when his lease authorized it; that the conclusion to be drawn from the English cases is that from the beginning the rights of the man who owned the land and of the man who took the minerals from it were worked out through the law of tenancy, without the aid of the law of sales; that the theory was that the mineral was the product of the use for which the rent was paid, and that the tenant got his title to his mineral by a proper use of the demised premises, and that it was never a circumstance of significance that such use from its nature resulted in the gradual consumption or even exhaustion of the portion of the land of chief worth. And the Court said that a consideration of the cases in this country leads to the same conclusion, that the propriety of a lease for the purpose of developing and working mines is recognized by all of the cases, and that such leases do not constitute a sale of any part of the land, and that iron or other materials derived from the usual operation of mines or quarries constitute the rents or profits of the land.

State vs. Evans, 99 Minn., 223;
Bainbridge on the Law of Mines and Minerals, American Ed., page 197;
United States vs. Gratoit, 14 Peters, 526.
Snyder on Mines, Vol. 2, Chap. 2, page 932;
Offerman vs. Starr, 2 Pa. State, 394;
Moore vs. Miller, 8 Pa. State, 273;
Hyatt vs. Vincennes Bank, 113 U. S., 408;

Lehigh Zinc & Iron Company vs. Bamford, 150 U. S., 665;
Tennessee Oil, Gas & Mineral Company vs. Brown, 131 Fed., 696;
Reynolds vs. Hanna, 55 Fed., 783;
Coke upon Littleton, 53-b;
Clegg vs. Rowland, L. R., 2 Eq., 160.

A long line of state cases might be cited, all in substantial harmony; but we do not deem it either necessary or proper. The Pennsylvania cases were cited because of their early date.

So that the tax that will fall upon the defendant company and operate to deplete the revenues distributable to its stockholders, falls upon its income by way of rentals and royalties from the use and occupation of its lands and is, therefore, within the decisions of this Court, a tax upon the land itself—a direct tax, unconstitutional and void.

IV.

The tax not being a valid excise tax levied with respect to the doing of any kind of business, or class of business, nor upon the production or consumption or sale of any particular commodity or product, or class thereof, but being laid with respect to the doing of any kind of business when done by a corporation, and with respect to the income of corporations only, the same, to be upheld, must have to be held as a valid tax upon the franchises of corporations.

As to this we say, first, that a law that taxes without apportionment the income of the real and personal estate of part of the people is no more valid than one which taxes the like income of all the people; and that the tax is none the less direct, and none the less violative of the Constitution, which requires that such taxes be apportioned, because

the same applies to corporations only, or to that portion of the people whose business is transacted through corporations; and that beyond this fatal line, this law cannot be carried. But we say, further, that even though the same is a direct tax, at least so far as the subject of incomes upon real and personal estate is concerned, and invalid for the above reason, still as a tax laid only when the income is received by corporations, it is also subject to the charge that it is, in effect, an attempt to levy a tax upon the corporate franchises of such corporations, and that, as such, it cannot be sustained, for it is violative of Article X of the Constitution, that is the tenth amendment.

McCulloch vs. Maryland, 4 Wheat., 316, 4th L. Ed., 579;

Collector vs. Day, 11 Wallace, 113, 20 Law. Ed., 122;

Weston vs. Charleston, 2 Peters, 449, 7 L. Ed., 481;

California vs. Central Pacific Railroad Company, 127 U. S., 1, 32 L. Ed., 150;

Home Insurance Company vs. New York, 134 U. S., 594; 33 L. Ed., 1025;

Wisconsin Central Railroad Company vs. Price County, 133 U. S., 496, 33 L. Ed., 687;

Union Pacific Railroad Company vs. Peniston, 85 U. S., 5, 21 L. Ed., 787;

Osborn vs. Bank of U. S., 9 Wheat., 738, 6 L. Ed., 204;

West River Bridge Company vs. Dix, 47 U. S., 507, 12 L. Ed., 535;

San Bernardino County vs. Southern Pacific Railroad Company, 118 U. S., 417, 30 L. Ed., 125.

The case of McCulloch vs. Maryland, 4 Wheat., 316, declared several propositions of constitutional law which have remained a continued assistance to the courts. The Court

in that case said that the power to create implies a power to preserve; that the power to tax embraces the power to destroy; that the power to destroy, if wielded by a different hand, is hostile to and incompatible with the power to create and preserve. The reasoning of the Court as to why the State could not tax the franchise of a corporation chartered by the United States in the exercise of a sovereign power is just as cogent and conclusive to the effect that Congress cannot tax the franchise of such a corporation when created by the exercise of sovereign power reserved to the States. Under the doctrine of this case, the Federal Government and State governments must respect each other's sovereignty within the sphere in which they are sovereign. And neither can so exercise its taxing power as to invade the sovereignty of the other, without violating the Constitution. If whatever the United States has a right to do the individual States has no right to undo, as was stated in that case, it is equally true that whatever the individual States, in the exercise of the reserved powers under the Tenth Amendment, have a right to do, the Congress of the United States has not the right to undo. There is the same repugnancy between the power of the State to create a corporation, and the power of Congress to tax its corporate franchise, because it could thus tax it out of existence, as there was declared in this case to be between the power of the State of Maryland to tax, and the power of Congress to preserve the United States branch bank in question.

In the first decision in the Pollock case, on page 584 of the official report, and 820 of the Lawyers' Edition, the learned Chief Justice used this language:

> "The Constitution contemplates the independent exercise by the Nation and the State, severally, of their constitutional powers. As the States cannot tax the

powers, the operations or the property of the United States, nor the means which they employ to carry their powers into execution; so it has been held that the United States have no power under the Constitution to tax either the instrumentalities or the property of the State."

In ~~Dobbins vs. Erie County Commissioners, 41 U.~~ Collector v Day supra S., ~~435, 10 L. Ed., 1032,~~ Mr. Justice Nelson said:

"The general Government and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other within their respective spheres. The former, in its proper sphere, is supreme; but the States, within the limits of their powers not granted or, in the language of the Tenth Amendment, reserved, are as independent of the general Government as that Government, within its sphere, is independent of the States, and that the two governments are upon an equality."

On page 126, the Court said:

"And if the means and instrumentalities employed by that Government to carry into operation the powers granted to it are necessarily and for the sake of preservation exempt from taxation by the States, why are not those of the States dependent upon their reserved power, for like reasons, equally exempt from Federal taxation? Their unimpaired existence in the one case is as essential as in the other."

In California vs. Central Pacific Railroad Company, *supra*, the Court said that a franchise granted by Congress cannot be taxed by a State; that taxation is a burden which may be laid so heavily as to destroy the thing taxed; that the power to tax involves the power to destroy, and that it is absurd to contend that the power given to a person or

corporation by the United States may be subjected to taxation by a State when the powers emanate from and are a portion of the powers of the government that confers them, and that to tax them is repugnant to its paramount sovereignty.

In Home Insurance Company vs. New York, *supra*, the Court held that the taxation of corporate franchises had no limitation but the discretion of the taxing power; once granted that either the Federal or State Government may tax the franchises of corporations chartered by the other, without any limitation save their discretion, what becomes of their respective sovereignty?

Veazie Bank vs. Fenno, 8 Wallace, 533, 19 L. Ed., 482, is, along with the Spreckels cases, declared to be a bulwark for this enactment, and to sustain the proposition that Congress has power to tax, even out of existence, a franchise granted by a State.

The law in question laid a heavy tax upon State bank circulation: and it was claimed, and perhaps admitted, that it was in the interest of national bank circulation.

Whatever consideration is to be given to this case, the fact should not be overlooked that the matter of establishing a uniform currency was within the powers delegated to the Federal Government, and the Government claimed in this case that it had the right to prohibit what it undertook to tax under that Act, and that the degree of taxation could no be regarded by the Court. Chief Justice Chase held that the tax was not a tax of the franchise granted by the State which Congress, upon the principle of exempting the reserved powers of the State from impairment by taxation, must be held to have no authority to lay and collect. Whatever else the learned Chief Justice said in the opinion —some of which it may perhaps be respectfully suggested was not necessary to the decision of the case—he declared that under the Constitution the power to provide for the

circulation of coin is given to Congress; that Congress may constitutionally authorize the emissions of bills of credit, may make them a currency uniform in value and description, and convenient and useful for circulation; that Congress had undertaken to supply the currency for the entire country, and that it could constitutionally secure the benefit of it to the people by proper legislation, and that it might limit by suitable enactment the circulation of notes not issued under its own authority, and that without this power its attempts to secure a sound and uniform currency for the country would be futile; and a majority court held the tax constitutional.

We submit that it is clear enough that it was so held, because it was within the power of Congress to control the subject of currency, and within its power to prohibit the circulation, as money, of notes issued by the State banks. Even then, two of the most eminent and learned justices upon the Bench dissented, on the ground that the tax was laid for the purpose of destroying the franchise granted by the State.

Mr. Justice Nelson said, in referring to the cases of United States Bank vs. Planters' Bank of Georgia, 9 Wheat., 904, and Osborne vs. United States Bank, 9 Wheat., 738, that down to that time the question had been, not whether the State banks were constitutional institutions, but whether Congress had power conferred on it to establish national banks, which question was closed by the case of McCulloch vs. Maryland, and he said the constitutionality of State banks came directly before the Court in the case of Briscoe vs. Bank of Kentucky, 11 Peters, 257, wherein the Court held, after full consideration, that the States possessed the power to grant charters to State banks; that the power was incident to sovereignty and that there was no limit under the Constitution on its exercise by the State.

It seems to us that we may derive from this case, whether we consider the majority or minority opinion, one very correct conclusion, and that is, that a tax so laid that it may destroy the institution, to wit: the corporation created by the State, is in derogation of the powers reserved to the State. The fact that Congress, in its right to provide a uniform currency, saw fit, under the assertion of the powers granted to the general Government by the States, to enact such laws as would practically make it impossible for the State banks to maintain a circulating medium, which law was sustained by the majority opinion in this case, does not, we think, when rightfully considered, furnish any authority for the general assertion of the right to tax the franchises of the corporation or to lay a destructive burden thereon.

Suppose the question of circulating medium, bills of credit, and so forth, not to be involved, and Congress should pass an act levying a tax either upon the franchise to be a State bank or the right to exercise such franchise, and to make it so burdensome that it would be impossible to operate such a bank; then we would have a case where the question of the right to destroy the creations of the States under their reserved power by taxing act of Congress would be sharpened to the testing point. Will it be claimed that Veazie Bank vs. Fenno furnishes authority for the assertion of such power? It must be so claimed if it is to be relied upon as authority to support the law of 1909.

The claim has been made by some of the sponsors for this law that it is only in respect to the exercise of a governmental function that the protection of the Tenth Amendment applies to prevent the impairment of the sovereign powers reserved to the States. We submit, first, that no such distinction is permissible either on reason or authority, and that to assert a power wielded by a different hand, which may be destructive of the constitutional creations of

the State, is an infringement upon the rights of the State reserved under the Tenth Amendment; and, second, that to destroy or impair the conceded rights of the States to charter corporations and preserve and maintain them by the exercise of their reserve powers is, in effect, to cripple the States and impair their revenues for the maintenance of the State government, and to interfere with the States in what they deem and have a right to determine for themselves to be proper instrumentalities for the development of the resources of the State.

No argument can be made for the inhibition of the Constitution upon the States against taxing corporate franchises granted within the constitutional power of the general Government that does not apply upon both reason and authority to prevent the wielding of like destructive power by Congress, through the means of a corporation tax levied upon franchises of corporations created by States through the exercise of their reserved sovereign powers. This doctrine does not prevent the States from taxing the property of Federal corporations within their domains; nor does it prevent the general Government from levying valid, direct taxes and apportioning the same, of which corporations, as well as individuals, must bear their just share; nor does it prevent the levying of valid excise taxes in accordance with the constitutional requirement of uniformity, which must fall on corporations as well as individuals and parnerships.

The construction we contend for gives to each government just what the Constitution provided, but refuses to sanction attempts upon the part of either government, through those for the time controlling it, to infringe upon or dissolve or annihilate the constitutional rights and powers of the other.

We invoke the very protection which the framers of the Constitution were careful to provide and which the States

were particular to have provided before the adoption of the Constitution. Therefore, in addition to the other grounds before urged, we submit that as a tax purely upon corporations, because they are corporations, as a tax upon corporate franchises, the law is invalid as violative of the Tenth Amendment to the Constitution.

V.

The law is unconstitutional and void for the further reason that it provides enormous and excessive penalties for failure to comply therewith, intended to operate to prevent parties taxed from contesting the validity of the law, and to coerce compliance therewith. And for these reasons, as well as because of the arbitrary inequalities of the law, the act denies to the corporations taxed the equal protection of laws, contrary to Section 1 of Article XIV of the Amendments to the Constitution.

It further operates to deprive such corporations of their property, without due process of law, contrary to Article V of the Amendments to the Constitution; and contravenes Article VIII of the amendment which provides that excessive fines shall not be imposed.

We shall not argue these at length. We submit, however, as it has been submitted to this Court before, that the requirement of the Fourteenth Amendment is as binding upon the general Government as upon the States, and that any law of Congress that denies equal protection is as violative of the Constitution as though enacted by a State; that a law which abrogates the principle of equality must find constitutional support therefor, and that such constitutional authority is wanting. That when it not only contains glaring inequalities, but undertakes to coerce compliance by the fixing of a penalty of not less than one thousand dollars, nor more than ten thousand dollars, with a fifty per cent

addition to the tax for failure to file a return and expose the private affairs of a corporation to examination as public records, the law not only denies equal protection, but operates to deprive parties of their property without due process of law, and ignores the provision that excessive fines shall not be imposed.

"Due process of law" is a term neither as narrow nor as broad as the meanings which the public sometimes give to it, imply. It is not limited to Court proceedings; it does not necessarily require proceedings in Court at all. It seems to have originated in Magna Charta. Mr. Cooley defines it as follows:

> "Due process of law in each particular case means such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class to which the one in question belongs."
>
> Cooley on Constitutional Limitations, 6th Edition, page 434.

In Harding vs. The People, 160 Ill., 459; 32 L. R. A., 445, the Court said that the phrases "due process of law" and "law of the land" are synonymous and refer to general public law operating upon all alike, and not to such as singles out for regulation, without reason, particular persons or classes. It is held universally to apply to corporations as well as individuals, because it is said the property of a corporation is in fact the property of its stockholders, and to deprive the corporation or to burden it is, in fact, to deprive the stockholders of their property or lessen its value.

The provision is intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice. Columbia Bank vs. Okeley, 4 Wheat., 244.

If process of law is due only when it operates with equality and in accordance with the established principles of private rights and distributive justice, laws must so operate, or they are violative of the constitutional provision and, as well, violative of the provisions of Article XIV, relative to equal protection of the law. As relates to taxation, taxes should apply equally, impartially and uniformly upon all similarly situated. Absolute and perfect equality may not be attainable, but glaring and intentional discriminations have no constitutional sanction. The spirit of the entire instrument and the fundamental principles of a free government, cry out against such a law.

This constitutional provision and similar ones under State constitutions have received judicial consideration in hundreds of cases as applied to various subjects involving life, liberty and property, including taxation and the taking of private property for public use, etc. And we submit, under the interpretations given, that laws which do not operate equally and impartially as above stated are without judicial support.

May we here quote the language of Mr. Justice Field, relative to unequal taxation in California, used by him in the decision in the San Bernardino case, 118 U. S., at page 423, and page 127 of Book 30, Lawyers' Edition, where he said:

> "The question is whether it (the State) may prescribe rules for the valuation of property for taxation which will vary according as it is held by individuals or by corporations. The question is one of transcendent importance, and it will come here and continue to come until it is authoritatively decided in harmony with the great constitutional amendment which insures to every person, whatever his position or association, the equal protection of the laws, and that necessarily implies freedom from the imposition of unequal burdens under the same conditions."

We believe it has been laid down by the best text writers, including Mr. Cooley, that the requirement of approximate equality inheres in the very nature of the power to tax, even though not declared by written constitution; but we submit that such approximate equality is required by the provisions of the Constitution now under consideration.

We have pointed out under previous sub-divisions some of the glaring inequalities of this law. We need not here reiterate them.

Relative to the coercive provisions of the law, providing for enormous fines and penalties for failure to comply therewith, that question has so recently been before this Court, in the case of Edward T. Young, 209 U. S., 123; 52 L. Ed., 714 (in which elaborate briefs were before the Court), that we will not enlarge upon it here. This Court held, in that case, that a law which fixed penalties for disobedience of its provisions by fines so enormous and imprisonment so severe as to intimidate the corporations and their officers from resorting to the courts to test the validity of the rates fixed by it, is unconstitutional as depriving the corporations of the equal protection of the laws.

A somewhat similar law was before the Court in the case of Hunter vs. Wood, reported immediately following in the same volume.

We submit, upon all the grounds urged, that the judgment appealed from should be reversed.

JED. L. WASHBURN,
Solicitor for Appellant,
709 Lonsdale Bldg., Duluth, Minn.

WILLIAM B. BAILEY,
OSCAR MITCHELL,
Of Counsel.